

Supreme Court of the United States

OCTOBER TERM, 1955.

No. 278.

JAMES P. MITCHELL, Secretary of Labor,
United States Department of Labor,

Petitioner,

vs.

KING EDWARD TOBACCO COMPANY OF FLORIDA
and MAY TOBACCO COMPANY,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT.

PETITION FOR REHEARING.

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Company,*

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PETITION FOR REHEARING.

Respondent May Tobacco Company respectfully requests a rehearing upon the following grounds:

I.

The Court's opinion (p. 8) states that delivery of the tobacco at the receiving platform of the packing plant is "delivery . . . to market" within the meaning of Section 3(f) of the Fair Labor Standards Act. In the case of May, there is not a syllable in the record to support such a statement. The transfer of May's ripened tobacco leaf from its curing barn on the farm to its own packing plant does not involve a sale of the tobacco leaf to others. May does

And again (R. K. 25):

"In nearly all cases, however, neither the bulk method nor the case sweep as initially carried out is sufficient to prepare cigar tobacco for manufacture."

Apart from these statements, we submit, with due deference and great respect, that it is unrealistic to say that the ripening of unstemmed tobacco, which involves no application of machinery nor the aid, application nor use of any external catalyst but only simple manual labor (R. K. 69), is a process which changes tobacco as significantly as milling changes sugar cane. Sugar cane is cut, ground and pressed by the use of machinery and two different products—raw sugar and molasses—emerge.

IV

What has been said in paragraphs I, II and III, *supra*, demonstrates, at the very least, that the record in the May case is insufficient to justify the granting of summary judgment against May, with the consequent effect of depriving it of the opportunity to adduce evidence upon a trial in support of its claim to an exemption. For example, May should have the opportunity to show that machinery plays no part in the packing plant activities; that the equipment used at the packing plant is neither elaborate nor expensive; and that an overwhelmingly high percentage of the time of May's employees at the packing plant is devoted to the simple process of piling and repiling the tobacco leaf. Upon a trial, the District Court (by stipulation of the parties) could inspect the packing plant while the bulking activities are in progress and see how unindustrialized and simple the packing plant activities really are. The Government's supplemental memorandum (p. 4) concedes that the

record *against* May is sparse. In view of that concession, May should have an opportunity to make a full record. This cannot prejudice the Government, but if the summary judgment stands affirmed, May will be forever deprived of the opportunity to prove its eligibility for the agricultural exemption.*

V.

It may be that the Court reversed its vote May as well as to Budd because it felt that a distinction between the two would result in an economic advantage to May.** If this be so, the decision has produced an ironical result. The opinion has sustained the validity of the area of production regulation made pursuant to Section 13(a)(10) of the Act. Indeed, that was the principal point of the decision. Since many farmers are qualified under the area of production regulation they do not have to comply with the minimum wage and maximum hours provisions of the Act. But May cannot qualify without abandoning its packing plant at Quincy and transferring the packing plant activities to its farm. Thus, the effect of the Court's decision is to place May at an economic disadvantage with many other growers of U. S. Type No. 62 tobacco.

May is prepared to stipulate that it will comply, without prejudice, with the minimum wage and maximum hours provisions of the Act pending the outcome of a trial and thus assure that employees will not be prejudiced if the Government should prevail upon the trial.

** This possibility was alluded to at page 17 of petitioner's supplemental memorandum.

Conclusion..

May, therefore, respectfully requests a rehearing, or, in the alternative, that the Court modify its decision to grant May a trial of the issues of fact.

Respectfully submitted,

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King Edward Tobacco Company of Florida also respectfully petitions for re-hearing upon the grounds hereinabove stated.

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Certificate of Counsel.

The undersigned hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay.

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